

Minutes of Public Meeting
ARIZONA BOARD OF FINGERPRINTING
February 7, 2000

A special meeting of the Arizona Board of Fingerprinting was held at the Department of Economic Security, 4th Floor, 1789 W. Jefferson, Phoenix, Arizona. The meeting began at approximately 8:00 a.m.

MEMBERS PRESENT

Mike LeHew
Corinne Velasquez
Joe Garcia
Cheryl Rowley
Kim Pipersburgh

MEMBERS ABSENT

CALL TO ORDER

ROLL CALL

SPECIAL SESSION

Mr. LeHew introduced the item and relaxed the formal parliamentary procedures in order to conduct an open discussion of this topic.

**CONSIDERATION OF REVIEW OF
CLEAN-UP LEGISLATION**

SB1407

1. Ms. Velasquez made the motion to delete this paragraph. Motion carried 4-0 with one abstention.

Page 17, #D, Line 13 through 15

MOTION

2. Ms. Velasquez made the motion to revise this sentence to include "and must be appointed by the agency head." Motion carried 5-0.

Page 17, #F, Line 20 and 21

MOTION

3. Ms. Velasquez made the motion to delete the first sentence and the first two words of the second sentence and to begin the second sentence with "The Board". Motion carried 4-0 with one abstention.

Page 18, #D, Lines 4 through 6

MOTION

4. Ms. Velasquez made the motion to delete the paragraph. Motion carried 4-1.

Page 19, #I, Line 34 through 37

MOTION

5. Ms. Velasquez made the motion to delete the paragraph and to handle the issue within the Board's internal policies and procedures. Motion passed 4-0 with one abstention.

Page 19, #J, Line 38 through 40

MOTION

6. Ms. Velasquez made the motion to delete the words "on school grounds or near schools". Motion passed 4-0 with one abstention.

Page 33, Line 33

MOTION

7. Ms. Velasquez made the motion to delete any limitations to when the offense occurred. Motion passed 4-0 with one abstention.

Page 3, Lines 32 and 33; Page 5, Line 3; Page 9, Line 37; Page 12, Lines 14 and 15; Page 14, Lines 1 and 2; Page 15, Lines 38 and 39; Page 34, Lines 3 and 4; Page 35, Lines 6 and 7; Page 37, Lines 22 and 23; Page 39, Lines 28 and 29; Page 42, Lines 9 and 10; and page 44, Lines 24 and 25

MOTION

8. Ms. Velasquez made the motion to delete the paragraph. Motion passed 4-0 with one abstention.

Page 35, #J, Lines 21 through 24

MOTION

9. Ms. Velasquez then made the motion to add new language: "If the Board has approved a good cause exception, the person shall be issued a fingerprint clearance unless a new crime is identified since the good cause exception was granted." Motion passed 4-0 with one abstention.

Page 35, #J, Lines 21 through 24

MOTION

Mr. LeHew directed the Director to prepare the amendments and a cover letter to Senator Smith in order to present to him by noon of the same date.

ADJOURNMENT

Mr. Lehew adjourned the meeting at approximately 9:25 a.m.

Approved by the Board on the 21 day of March, 2000.

Mike Lehew
Chair

This bill makes numerous changes to the fingerprint clearance card process and the Board of Fingerprinting duties. The section does have questions/concerns about some of these changes. Examples:

1. On pg 19, lines 38-40 the bill references a "criminal record affidavit form". This form is not used in the fingerprint clearance card process so do not know why the form is referenced.
2. On pg 35, lines 21-24 it talks about persons who had received a good cause exception from the original state agency prior to the implementation of the fingerprint clearance card process. It directs DPS to issue these people a card. Our concern is that DPS would have no way of knowing if a person had been granted a good cause exception by one of the five state agencies in the past. Believe this whole issue of granting cards based on a past good cause exception by one of the five state agencies belongs in the Board of Fingerprinting's realm. Who is to say that just because DES issued a good cause exception five years ago that the criteria used at that time by DES is the same criteria they would have used today or that the other four agencies would even agree to the criteria used by DES five years ago. Each of the agencies had their own criteria for issuing good cause exceptions.
3. Pg 36, lines 18-21: the bill states that if a person was "exonerated" by a court for a prior conviction that DPS would issue a card. The word "exonerate" needs to be clearly defined as people routinely define the word differently. Also there is legal precedence for denying an application for licensing or employment even if a conviction was later vacated by a court. See Attorney General's Opinions I89-082 and I83-042. DPS currently denies applications even if the person has a court order vacating the judgement of guilt and this procedure has been upheld in other cases.



ARIZONA BOARD OF FINGERPRINTING

Mail Code 2500 P.O. Box 6638 Phoenix, AZ 85005-6638
Telephone: (602) 223-2800 Fax: (602) 223-2947

Board Members:

Mr. Mike LeHew, Chair

Ms. Corinne Velasquez, Vice Chair

Mr. Joe Garcia

Ms. Cheryl Gira

Ms. Kim Pipersburgh

DATE: October 20, 1999

TO: Mike LeHew, Chair, Board of Fingerprinting

FROM: Sally Loveland

SUBJECT: LEGAL ISSUES

FOR: ☐ action ☐ decision ☒ information ☐ signature

At your direction, I contacted the Attorney General's Office regarding the following legal issues related to good cause exception hearings. Each issue is followed by the attorney's response.

1. *Are good cause exception hearings except from the Open Meeting Law?*
(per Ms. Eva Bacal, Attorney General's Office)

Good cause exception hearings are exempt from the entire open meeting process. They are classified as "hearings" so they can not be held in Executive Session. However, they are not exempt from the Basic Administrative Hearing procedures.

Hearings can be held at any time. Decisions can be made during the hearings. No mention of the people's names need be made in the open meeting agenda or minutes, but hearing decisions and any directions provided to DPS must be announced in the open meeting.

2. *Is the Board required to prepare notice of hearings, findings of fact, and conclusions of law for good cause exception hearings?*
(per Ms. Eva Bacal, Attorney General's Office)

Yes. It is not necessary to transcribe every hearing if it is taped and the tapes are kept with the package. The Board will need to transcribe the hearing if the case ends up in court.

3. *As it relates to the Board and good cause exception hearings, what is a public record?*
(per Ms. Eva Bacal, Attorney General's Office)

Board meetings are subject to the Open Meeting Law so all minutes are public record. Good cause exception hearings are exempt by statute.

4. *Reference: 41-619.A.*

The following persons shall be present during good cause exception hearings:

1. A representative of any state agency that requires a person to have a valid fingerprint clearance card.

2. The person who requested the good cause exception hearing. The person may be accompanied by a representative at the hearing.

- 4a) *Does the applicant have to be physically present at the hearing or is a telephonic presence acceptable?*
(per Ms. Bacal and Mr. Jameson, Attorney General's Office)

The Board may establish its own rules on this issue. A telephonic presence is acceptable but the Board needs to revise its rules to reflect this.

- 4b) *Is the Board member who represents the agency who requires the above applicant to have the fingerprint card the only Board member that needs to be present?*
(per Mr. Jameson, Attorney General's Office)

A representative from each agency on the Board must be represented at each good cause exception hearing.

5. *Does the Board operate independently of the agencies it represents?*
(per Mr. Jameson, Attorney General's Office)

Absolutely. The Board is an entity separate and apart from the individual agencies whose members compile the Board.

6. *Where is it authorized that alternates be selected for the Board members?*
(per Mr. Jameson, Attorney General's Office)

Title 38, Section 461, Chapter one provides this authorization. It may also be a good idea to include in the Board's administrative rules that the same party who appointed the representative assign an alternate.

7. *Can the Board approve good cause exceptions for certain offenses without conducting a hearing? (i.e., maybe for an offense that occurred a long time ago or perhaps for less severe offenses – have a review process that would either approve or send to hearing; then on hearing cases – either approve or deny)*
(per Mr. Jameson, Attorney General's Office)

This type of process would need a statutory change.

8. *When approving good cause exceptions, is the unanimous decision based on the entire Board, on a quorum of Board members, or only the board members who represent agencies serving similar populations?*
(per Mr. Jameson, Attorney General's Office)

All good cause exception hearing decisions must be unanimous with at least a quorum of the Board members present.

Notes from legislation meeting - 10/8/99

ISSUES:

1. Does the Board operate independently of the agencies it represents? (*see Legal Issues #5*)
2. Who has approval authority over a good cause exception that doesn't apply to their agency? (*see Legal Issues #4b and 8*)
3. Are hearings always needed to approve an exception? (*see Legal Issues #7*)
4. Do all Board members need to be present at a hearing? (*see Legal Issues 4b and 8*)
5. Shall we include a grandfather clause for those already approved for a good cause exception so they won't have to go through the process again?
6. Shall we exclude people who have been exonerated by a court?
7. Shall we include a 5-year limitation on offenses? Develop guidelines for the types of offense this limitation would cover?
8. Shall we change legislation to allow DPS to directly notify individual providers and not just the State agencies?
9. Can an individual work while waiting for a good cause exception?
10. Shall we authorize interim approval to work (under direct supervision) while waiting for a good cause exception ruling?
11. Shall we tie the above authorization in with additional legislation to suspend the agencies if they continue to employ the person after a negative ruling?
12. Do we need to rewrite the grandfather clause (25.85) to clarify the last page?
13. Shall we change legislation to allow the Board authority to sanction the agency if they do not provide direct supervision when required?
14. Shall we strike the issue of a person having to work in the last six months? Won't the automated telephone update give us the info we need?
15. Shall we strike the DUI offenses from the legislation?
16. Shall we exempt physicians from having to be fingerprinted?

17. Shall we delete the criminal history affidavit requirement that DHS receive and maintain them?
18. Shall we delete 41.1954.21 – the original good cause exception rule for substance abuse?
19. Shall we include a statute authorizing an alternate be appointed? (*see Legal Issues #6*)
20. Shall we include a penalty action to terminate a provider who doesn't fire a person who lies on the form?



BILL STATUS OVERVIEW

SB1407

SPONSORS: SMITH P

TITLE: fingerprinting

SENATE FIRST READ: 01/25/00

SECOND READ: 01/27/00

COMMITTEES: ASSIGNED COMMITTEES ACTION

01/27/00 JUD

01/27/00 FIN

01/27/00 RULES

[Bills](#) | [Members](#) | [FloorCalendars](#) | [CommitteeAgendas](#) | [Session Laws](#) | [Statutes](#) | [Arizona Constitution](#)



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BILL STATUS OVERVIEW

SB1407

SPONSORS:	SMITH	P
TITLE:	fingerprinting	
SENATE FIRST READ:	01/25/00	
SECOND READ:	01/27/00	
COMMITTEES:	ASSIGNED	COMMITTEES ACTION
	01/27/00	JUD
	01/27/00	FIN
	01/27/00	RULES



ARIZONA BOARD OF FINGERPRINTING

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Board Members:

Mr. Mike LeHew, Chair

Ms. Corinne Velasquez, Vice Chair

Mr. Jose Garcia

Ms. Cheryl Rowley

Ms. Kim Pipersburgh

February 7, 2000

The Honorable Tom Smith
Arizona State Senate
Senate Wing, Capital Complex
Phoenix, Arizona 85007

RE: AMENDMENT TO SENATE BILL 1407

Dear Senator Smith:

The Board of Fingerprinting met this morning to review the proposed Senate Bill #1407. As requested by Rick Piper, we have enclosed proposed our recommendations for amending this bill. The Board feels these changes are needed in order to clarify the language and allow smoother processing of good cause exceptions.

If you need any clarification on the enclosed recommendations, or if you have any other questions or concerns, please contact me at (602) 223-2800 or (602) 542-7058.

Sincerely,

Mike LeHew
Chair

Enclosure

cc: Legislative Liaison for:

Administrative Office of the Courts
Department of Economic Security
Department of Education
Department of Health Services
Department of Juvenile Corrections
Department of Public Safety
Rick Piper, Senate Research Analyst

PROPOSED AMENDMENTS TO SENATE BILL #1407

1. Page 17, #D, Lines 13 through 15

DELETE paragraph.

(The wording is vague, it conflicts with #C above it, and is inconsistent with the Board's need for a quorum and unanimous decision-making requirements. It defeats the purpose of having a Board comprised of representatives from the five departments.)

2. Page 17, #F, Lines 20 and 21

REWRITE paragraph to read:

A designee of a Board member may PARTICIPATE on behalf of the Board member AND MUST BE APPOINTED BY THE AGENCY HEAD.

(Board meetings must be held under the Open Meeting Law requirements so anybody who wants to may attend. If the intent is that another agency member can attend and participate in Board decisions, on behalf of the appointed Board member, then the Agency head should designate that alternate.)

3. Page 18, #D, Lines 4 through 11

DELETE the first sentence and REWRITE paragraph to read:

D. The Board shall determine whether a good cause exception should be granted and shall notify the department of public safety to issue the person a card. The person shall request in writing that the department of public safety designate on the fingerprint clearance card the agency or agencies that approve a good cause exception.

(Similar has already been deleted from the law -- see A.R.S. §41-619.53, Line 41, Section B. The Board believes that an oversight has occurred by not deleting this section as well. "The Board" replaced "Each member" for clarity.)

4. Page 19, #I, Lines 34 through 37

DELETE paragraph.

(Not needed. The Department of Public Safety's computer system will automatically tracks new arrests/charges of people with valid fingerprint clearance cards.

5. **Page 19, #J, Lines 38 through 40**

DELETE paragraph.

(This issue can be better handled within internal Board policies and procedures.)

6. **Page 33, Line 23**

DELETE "on school grounds or near schools"

(This is needed for consistency with the rest of the legislation.)

7. **Page 3, Line 32 and 33; Page 5, Line 3; Page 9, Line 37; Page 12, Line 14 and 15; Page 14, Line 1 and 2; Page 15, Line 38 and 39; Page 34, Line 3 and 4; Page 35, Line 6 and 7; Page 37, Line 22 and 23; Page 39, Lines 28 and 29; Page 42, Lines 9 and 10; and Page 44, Lines 24 and 25.**

DELETE all references to time limitations. The Board has concerns with automatically approving a fingerprint clearance card for those individuals who may have **multiple** DUI offenses.

8. **Page 35, #J, Lines 21 through 24**

DELETE paragraph. INSERT new paragraph:

IF THE BOARD GRANTED A PERSON A GOOD CAUSE EXCEPTION, THE PERSON SHALL BE ISSUED A FINGERPRINT CLEARANCE CARD UNLESS A NEW CRIME IS IDENTIFIED SINCE THE GOOD CAUSE EXCEPTION WAS GRANTED.



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Board Members:

Mr. Mike LeHew, Chair

Ms. Corinne Velasquez, Vice Chair

Mr. Joe Garcia

Ms. Cheryl Gira

Ms. Kim Pipersburgh

DATE: January 26, 2000

TO: All Board Members

FROM: Sally Loveland, Director, Board of Fingerprinting *sal*

SUBJECT: LEGISLATIVE ISSUES

FOR: ☒ action ☐ decision ☒ information ☐ signature

On Monday I attended a meeting with Senator Tom Smith and representatives of assorted public and private agencies regarding legislative changes. A bill has been drafted changing various aspects of the Fingerprinting legislation, some of which directly affect Board operations. There appeared to be a general misunderstanding among participants that the Board was actively involved in drafting, and whole-heartedly endorsed, these changes. It created some discomfort and embarrassment when both the Board Chair, Mike LeHew, (who also attended) and I questioned these changes.

Some of the changes reflect issues that were brought up in an informal meeting called last October 8, 1999 by Kit Komarek and are left over from the so-called "parking lot" list. Kit's meeting was identified as an informal information gathering of interested parties. Although there was some discussion, no votes or decisions were made by the attending group. I shared some of the issues that were raised at that meeting with the Board Chair and was directed to obtain legal opinion on them as well as other issues affecting the Board.

The Board met on November 10, 1999 to discuss these and other legislative topics and to review the legal opinions received from the Attorney General's Office. At that meeting the Board voted on proposed legislative changes for Fiscal Year 2000.

Please remember that the Board and its activities are subject to the Open Meeting Law. Any decisions or actions taken on behalf of the Board (other than Good Cause Exception Hearings) must be conducted properly under the open meeting process.

I have attached copies of the notes I took at the October 8th meeting, a memo from me to Mike LeHew regarding legal opinions from the Attorney General's Office, and the Board of Fingerprinting proposed legislative changes that were forwarded to Senator Smith.

It is extremely important that Board members keep their legislative liaison apprised of any legislation proposed by the Board as well as informing the Board of any legislation proposed by their agency that may affect Board operations. While most Board members cannot speak for

their agency as a whole, each of you have been appointed by your Director or Chief Justice to the Board and as such are authorized to speak to your agency on behalf of the Board on Board related issues.

Portions of the draft legislation will directly affect Board activities and do not reflect the changes approved by the Board at its November 10, 1999 meeting. In order to address the legislation that directly affects Board operations, I propose that the Board meet and formally discuss these issues. I await your direction.

Enclosures



ARIZONA BOARD OF FINGERPRINTING

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Board Members:

Mr. Mike LeHew, Chair

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Mr. Jose Garcia

Ms. Cheryl Gira

Ms. Kim Pipersburgh

November 22, 1999

The Honorable Tom Smith
Arizona State Senate
Senate Wing, Capitol Complex
Phoenix, Arizona 85007

RE: A.R.S. § 41-619.53 and 55, Board of Fingerprinting

Dear Senator Smith:

The purpose of this letter is to request your assistance in amending the above referenced statutes relating to the Board of Fingerprinting. Enclosed are proposed changes that the Board feels will clarify existing language and allow smoother processing of good cause exception hearings.

Also enclosed are copies of the supplemental budget requests for Fiscal Year 2000 and 2001 that the Board has already submitted in accordance with A.R.S. § 35-131.D. The amended budget requests are necessary in order to fill the second FTE position. Although the Board was authorized two FTE positions, the first year's funding was insufficient to fund both positions. Nevertheless, the projected workload will exceed the capabilities of one individual.

At your convenience, I would also like to schedule a meeting with you and the Board members to discuss other legislation that you might have regarding the Board or good cause exception hearings.

Sincerely,

Mike LeHew
Chair

Enclosures

cc: Lt. Rick Knight, DPS Legislative Liaison

MLH:sal

ARIZONA BOARD OF FINGERPRINTING

PROPOSED LEGISLATIVE CHANGES FOR FY2000 SESSION

1. A.R.S. § 41.619.53 – Currently Reads

- A. The board of fingerprinting shall:
- 2. Adopt rules to implement this article. These rules shall include procedures and standards for good cause exceptions including standards that serve similar populations to allow a good cause exception to be granted to an applicant.
- B. If the board members who represent agencies that serve similar populations unanimously agree to grant a good cause exception, the board shall request in writing that the department of public safety issue a card to the applicant. If the board does not make a unanimous decision, a card shall not be issued to the applicant.

A.R.S. § 41.619.53 – Proposed

- A. The board of fingerprinting shall:
- 2. Adopt rules to implement this article. These rules shall include procedures and standards for GRANTING good cause exceptions ~~including standards that serve similar populations to allow a good cause exception to be granted to an applicant.~~
- B. If the board members ~~who represent agencies that serve similar populations~~ unanimously agree to grant a good cause exception, the board shall request in writing that the department of public safety issue a card to the applicant. If the board does not make a unanimous decision, a card shall not be issued to the applicant.

Commentary:

The phrase “similar populations” is confusing and redundant. The purpose of this change is to strike “similar populations” from the statutes.

2. A.R.S. § 41.619.55 – Currently Reads

- B. The following shall be present during good cause exception hearings:
 - 1. A representative of any state agency that requires a person to have a valid fingerprint clearance card.
 - 2. The person who requested the good cause exception hearing. The person may be accompanied by a representative at the hearing.

A.R.S. § 41.619.55 – Proposed

B. WHEN CONSIDERING REQUESTS FOR GOOD CAUSE EXCEPTIONS:

1. THE BOARD MAY APPROVE A REQUEST FOR A GOOD CAUSE EXCEPTION WITHOUT HOLDING A HEARING.
2. WHEN HEARING GOOD CAUSE EXCEPTIONS, A REPRESENTATIVE FROM EACH STATE AGENCY ON THE BOARD SHALL BE PRESENT.
3. THE BOARD MUST HOLD A HEARING TO DENY A REQUEST FOR A GOOD CAUSE EXCEPTION. The person who requested the good cause exception hearing HAS A RIGHT TO be present during the hearing. The person may be accompanied by a representative at the hearing.

F. UPON REVOCATION OF A FINGERPRINT CLEARANCE CARD, THE APPLICANT MAY NOT REAPPLY FOR A PERIOD OF TWELVE (12) MONTHS.

Commentary:

The Board feels that these modifications will allow the Board flexibility in approving appeals at the same time that they would reduce the number of formal hearings needed. Additionally, not requiring the person who requested the good cause exception to be present, reduces the hardship on those appellants who do not live in the metropolitan Phoenix area.

BOARD OF FINGERPRINTING
Amended Budget Request for Fiscal Year 1999/2000

10/18/99

Personal Services	\$	45,200.00
ERE	\$	9,000.00
Professional/Outside Services	\$	-
In-State Travel	\$	-
Out-of-State Travel	\$	-
Other Operating	\$	19,100.00
Capital Equipment	\$	<u>-</u>

TOTAL	\$	73,300.00
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Current Amount Appropriated: \$60,000.00

ADDITIONAL FUNDING REQUESTED: \$ 13,300.00

BOARD OF FINGERPRINTING
Amended Budget Request for Fiscal Year 2000/2001

10/18/99

Personal Services	\$ 77,300.00
ERE	\$ 18,300.00
Professional/Outside Services	\$ 11,800.00
In-State Travel	\$ 500.00
Out-of-State Travel	\$ -
Other Operating	\$ 16,400.00
Capital Equipment	<u>\$ -</u>
TOTAL	\$ 124,300.00

Current Amount Appropriated: \$ 60,000.00

ADDITIONAL FUNDING REQUESTED: \$ 64,300.00



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